HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No. 343 of 2007

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Between:

M.Malyadri & others

... Appellants

And

The Government of Andhra Pradesh,
Rep. by its Secretary, Municipal Administration
And Urban Development, Hyderabad & others

....Respondents.

:: J U D G M E N T ::

Counsel for the appellants : Shri T.Rajendra Prasad

Counsel for respondent Nos.1 and 2: Government Pleader for Municipal Administration and Urban Development

25.04.2007

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 16.03.2007 passed by the learned Single Judge in W.P.M.P.No.2888 of 2007 in Writ Petition No.2256 of 2007, whereby he declined the appellants' prayer for stay of notification dated 16.01.2007 issued by State Government under Section 3(1-A) of the Andhra Pradesh Municipalities Act, 1965.

Shri T. Rajendra Prasad, learned counsel for the appellants vehemently argued that the order under challenge is liable to be set aside because it is devoid of reasons. He further argued that even though the appellants and other residents raised several

objections to the exclusion and inclusion of certain areas from Kandukuru Municipality, the concerned authority did not objectively consider the same and the State Government arbitrarily issued the final notification. Another argument of the learned counsel is that the notification impugned in the writ petition is ultra vires the provisions contained in Andhra Pradesh Municipalities (Inclusion or Exclusion of areas into/from the limits of Municipalities/Nagar Panchayats) Rules, 2006. He made a particular reference to Rule 3 of the Rules and emphasized that inclusion of some areas in the new municipalities which are at a distance of more than 3 K.Ms. and exclusion of some areas which fall within the radius of 3 K.Ms. is clearly indicative of non-application of mind by the concerned authority.

Learned Government Pleader for Municipal Administration and Urban Development defended the impugned notification and argued that the learned Single Judge did not commit any error by refusing to stay alteration in the boundaries of Kandukuru Municipality. He submitted that equities can be settled at the time of final adjudication of the writ petition, but interlocutory intervention by the Court will create innumerable complications.

We have considered the respective submissions. Ordinarily, the Division Bench is loath to interfere with the discretion exercised by the learned Single Judge to accept or not to accept the prayer for interim relief. Interference in such matters is warranted only when it is shown that the learned Single Judge has, while exercising the discretion to pass or not to pass an interim order, omits to consider relevant factors or the order is founded on irrelevant factors or considerations.

In the present case, the learned Single Judge briefly adverted to the legal matrix of the case and refused interlocutory intervention. There is nothing in the impugned order from which it can be inferred that the learned Single Judge has considered irrelevant factors or omitted to consider the relevant factors.

Whether notification dated 16.01.2007 is ultra vires the provisions of the Act and the Rules is a matter, which will be decided at the time of final adjudication of the writ petition and even though there appears some merit in the contention of the learned counsel, we do not consider it proper to express any opinion on the merits and demerits thereof because the same is likely to prejudice final adjudication of the writ petition.

The admission of the writ petition can, at best, be treated as an indicator of existence of prima facie case in favour of the appellants. However, that, by itself, does not justify stay of the notification issued by the State in exercise of its legislative power. If the writ petition is ultimately allowed, the Court may not only nullify the notification impugned in the writ petition but also the consequential action taken during the interregnum including the elections, if any held. Thus, the wrong, if any done to the appellants on account of alteration in the area of the municipality by

excluding certain areas and including other areas can be effectively remedied at the time of adjudication of the writ petition. On the other hand, if an interim order in terms of the prayer made by the appellants is passed and the writ petition is ultimately dismissed, it may not be possible for the Court to undo the wrong done to the affected persons. Therefore, the element of balance of convenience is clearly against the grant of interim stay. The element of public interest is also against the grant of stay in such matters.

For the reasons stated above, the appeal is dismissed.

It is, however, made clear that the election, if any held hereinafter will remain subject to final adjudication of the writ petition and it will be sufficient for the appellants to seek amendment of the petition for quashing the result of the election.

While disposing of the appeal in the manner indicated above, we deem it proper to request the learned Single Judge to entertain the prayer, if any made by the appellants for early hearing of the writ petition.

As a sequel to dismissal of the writ appeal, W.A.M.P.No.651 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

25.04.2007
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